Supreme Court, U. S.
FILED
JUL 23 1977
MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

No. 76-1582

DAWN A. WHITMER,

Petitioner,

vs.

EDWARD H. WHITMER,

Respondent.

BRIEF FOR RESPONDENT IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

RICHARD C. WITT, ESQUIRE,
JONES, GREGG, CREEHAN AND GERACE,
1010 Grant Building,
Pittsburgh, Pennsylvania 15219,

Attorneys for Respondent.

BATAVIA TIMES, APPELLATE COURT PRINTERS
EDWARD W. SHANNON, SENIOR REPRESENTATIVE
HAROLD L. BERKOBEN, REPRESENTATIVE
1701 PARKLINE DR., PITTSBURGH, PA. 15237
412-931-7469

INDEX.

	Page
Questions Presented	1
Statement of Case	1
Argument	3
Conclusion	4

CASES CITED.

Hanson v. Denckla, 357 U.S. 235, 78 S. Ct. 1228, 2 L. Ed. 2d 1283 (1958)	4
Overby v. Gordon, 177 U.S. 214, 20 S. Ct. 603, 44 L. Ed. 741 (1899)	4
Pennoyer v. Neff, 95 U.S. 714, 24 L. Ed. 565 (1877)	4
Rose v. Himely, 4 Cranch (8 U.S.) 240, 2 L. Ed. 608	4

STATUTE.

Act of April 27, 1927, P.L. 460, No. 294:	
Section 1	2
12 P.S. 1791	2
12 P.S. 1793	2

IN THE

Supreme Court of the United States

No. 76-1582

DAWN A. WHITMER,

Petitioner,

vs.

EDWARD H. WHITMER,

Respondent.

BRIEF FOR RESPONDENT IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

Questions Presented

I. Whether an action founded solely on a Florida judgment can be maintained under a Pennsylvania statute which provides for the appointment of a trustee to partition property in Pennsylvania upon petition to the Pennsylvania court.

II. Whether a Florida court has jurisdiction over property situate in Pennsylvania.

Statement of Case

Petitioner obtained an Order of Court in Florida granting her a divorce, all of the respondent's property, real and personal, physically located in Florida and one-half of his per-

sonal property in Pennsylvania. The title of this order is "FINAL JUDGMENT" and Paragraph 4 thereof contains the following language: "This judgment shall act as a conveyance to the Petitioner of the property awarded to her in this Paragraph 4." The property referred-to was one-half of Respondent's personal property in Pennsylvania.

Subsequent thereto, Petitioner filed a pleading in the Court of Common Pleas of Allegheny County, Pennsylvania, entitled, "Petition for Appointment of Trustee Pursuant to the Act of April 27, 1927, No. 294, 12 P.S. 1793." Petitioner's purpose in filing this pleading was to have a trustee appointed who would appraise and sell Respondent's Pennsylvania property and distribute half the proceeds to Petitioner.

Beginning with Section 1791, the said Act states:

> "Whenever personal property is owned jointly, by persons who are not partners; or are not husband and wife, and anyone of such persons desires to dispose of his or her right, title and interest in said personal property, and cannot arrive at a satisfactory arrangement with the other owner or owners of such personal property, it shall be lawful for such person to petition to the court of common pleas of the county wherein such property is situated, citing the facts of such joint ownership, the value of the property, and the inability of the joint owners thereof to agree to the amiable disposition thereof; whereupon the said court shall appoint a trustee for said personal property, which trustee, upon the filing of a bond in a sum in double the amount of the value of the personal property as set forth in said petition, conditioned upon the faithful performance of the duties of the said trustee as herein set forth; shall take immediate possession of said property."
> 1927, April 27, P. L. 460, N. 294 Sec. 1.

The said Act is quite clear that the property sought to be partitioned must be (1) "owned jointly" and (2) one of the joint owners must desire to dispose of "his or her right, title, and interest in said personal property." The Act is also clear that the person seeking the partition must establish the joint ownership of the property to be partitioned.

The Pennsylvania courts held that there was no basis to use the above law to partition Respondent's Pennsylvania property (Petition for a Writ of Certiorari—Appendix pages 11a and 23a) and, therefore, denied the Petition for Appointment of Trustee.

Argument

It is respectfully submitted that that the denial of a Petition for Appointment of Trustee under a Pennsylvania statute which sets forth specific requirements which must be met before such trustee can be appointed and partition can be accomplished does not involve a federal question which merits the consideration of the Supreme Court of the United States.

Petitioner's contention is that there is a general confusion and conflicting decisions in regard to the exceptions to the Full Faith and Credit Clause of the Constitution. It is respectfully submitted that there are a number of cases decided by this court dating back to the early 1800's which have set forth the principle of law that a court does not have *in rem* jurisdiction over property located outside the boundaries of the state or country from which the court's power is derived.

As early as 1808, Chief Justice John Marshall said, "It is repugnant to every idea of a proceeding in rem to act against a thing which is not in the power of the sovereign under whose authority the court proceeds; and no nation will admit that its

property should be absolutely changed, while remaining in its own possession, by a sentence which is entirely ex parte." *Rose v. Himely,* 4 Cranch (8 U.S.) 240 at page 277, 2 L. Ed. 608, 619.

This principle was followed in *Pennoyer v. Neff,* 95 U.S. 714, 722, 24 L. Ed. 565 (1877); in *Overby v. Gordon,* 177 U.S. 214, 221-222, 20 S. Ct. 603, 606, 44 L. Ed. 741 (1899) and in *Hanson v. Denckla,* 357 U.S. 235, 246, 78 S. Ct. 1228, 1236, 2 L. Ed. 2d 1283 (1958).

It is respectfully submitted that here the forum state is Florida and the subject property is not present in Florida. This court has always held that under such circumstances, the judgment of the forum state carries no efficacy into the state where the property is situate.

Since the law is clear in cases of this kind and has been set forth by this court all the way back to 1808, it is submitted that the issues presented are not such that merit the time and consideration of this court.

Conclusion

For the foregoing reasons, the Petition for Writ of Certiorari should be denied.

Respectfully submitted,

RICHARD C. WITT, ESQUIRE,
JONES, GREGG, CREEHAN
AND GERACE,
Attorneys for Respondent.